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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 86-391

IN THE

SUPREME COURT OF THE UNITED STATES

HERBERT ASHER, Petitioner,

v.

STATE OF WASHINGTON, Respondent.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

BRIEF OF OPPOSITION

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TABLE OF CONTENTS

	Page
I. ISSUE PRESENTED.	1
II. STATEMENT OF FACTS.	1
III. STATEMENT OF PROCEDURES. . .	2
IV. ARGUMENT.	5
V. CONCLUSION	9

TABLE OF AUTHORITIES

Table of Cases

Brown v. Texas, 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979)	6, 7 8
Delaware v. Prouse, 440 U.S. 649, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979)	5
Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)	6

Statute

RCW 46.37.050.	2

Other Authorities

Rule 23.1.	10

I. ISSUE PRESENTED

Is it unreasonable, under the Fourth Amendment to the Constitution of the United States, for a police officer to stop a motor vehicle being driven with defective state-required lighting equipment when the detention occurs during daylight?

II. STATEMENT OF FACTS

The defendant is this case was charged with operating a motor vehicle while being an habitual traffic offender. This offense was alleged to have occurred on 4 January 1985 at about 2:30 in the afternoon. At trial, Officer Bonar testified about how he came to stop Mr. Asher's vehicle. He said that it was obvious to him that the defendant's car had been involved in a collision. He stated that the sides were pushed in, the chrome was torn, and

the chrome housing around the taillight was pulled back. He futher indicated that the taillight was broken up and destroyed. Officer Bonar specifically stated, on direct examination, that he was directly behind the defendant when he stopped him and that the tail brake light did not come on, as it obviously was not there to come on. The defendant was initially stopped for having a defective taillight, RCW 46.37.050. A computer check on the status of the defendant's privilege to drive revealed that he was an habitual traffic offender.

III. STATEMENT OF PROCEDURES

Mr. Asher was convicted in the Shoreline District Court, a court of limited jurisdiction, on 4 April 1985, of driving while an habitual traffic offender. The trial court denied the

defendant's motion to suppress all of the evidence in the case on the ground that there was not probable cause to believe that Mr. Asher was committing a traffic infraction at the time of the stop.

Under the Rules of Appeal for Courts of Limited Jurisdiction (RALJ), Mr. Asher appealed to the Superior Court. Following a review of the audio-tape-recorded record, consideration of briefs and oral argument, Judge George T. Mattson held as follows:

> The traffic stop in this matter was lawful because it was based on a reasonable and articulable suspicion that there was a violation of the law (i.e. RCW 46.37.050), to-wit: that the officer observed a tail light assembly that was "all broken up", "destroyed" and "obviously not working." He thereafter, prior to contact, as appellant's car was coming

> to a stop, noted that the brake light did not come on.

Mr. Asher's appeal as of right was denied on 15 October 1985.

He next sought discretionary review of the RALJ decision in Division I of the Court of Appeals of the State of Washington. A Court Commissioner denied his petition on 28 January 1986. Upon a motion to reconsider a panel of three judges of the Court of Appeals affirmed the Commissioner's decision by order dated 24 March 1986.

Mr. Asher next sought review of the Court of Appeals' refusal to grant him discretionary review of the RALJ decision. His petition for such review was denied by the Supreme Court of Washington on 12 June 1986.

He next sought certiorari in this Court.

IV. ARGUMENT

No significant question of federal constitutional law is presented by the facts and proceedings in this case. A police officer observed a vehicle with obviously defective equipment and stopped it. The trial court found that there was probable cause to stop the vehicle and there is ample evidence in the record to support this finding.

Under the Fourth Amendment to the United States Constitution, an officer may stop a motorist may be stopped and detained under the Fourth Amendment where an officer has an articulable and reasonable suspicion that the driver has violated the law. Delaware v. Prouse, 440 U.S. 649, 663, 59 L. Ed. 2d 660, 673, 99 S. Ct. 1391 (1979). In the instant case, the officer stopped the defendant because he had a reasonable suspicion that the taillight on the

defendant's car was inoperable. See RCW 46.37.050. Appendix B.

The reasonableness of a particular seizure depends upon a balancing of the public interest in law enforcement against the severity of the interference with the individual's liberty and privacy. Brown v. Texas, 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979).

When applying this balancing test, courts have generally acknowledged that under some circumstances a person may be detained briefly even though probable cause for arrest may be absent. Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). Absent probable cause, officers are required to have a reasonable suspicion based on objective facts that the individual is involved in criminal activity. Brown v. Texas, supra. The reasonable suspicion must be examined in the context of the totality

of the circumstances and must be based on more than an inarticulate hunch.

The U.S. Supreme Court in Brown gave a good illustration of an inarticulate hunch. In Brown the police officers stopped the defendant after they observed him walk away from another individual in an alley in a neighborhood frequented by drug abusers. The officers testified the situation "looked suspicious." This appearance of suspicion was not enough for the court to find reasonable suspicion to justify an investigatory stop. The officers in Brown were unable to point to any facts supporting the conclusion of a suspicious situation. The court distinguished the Brown situation from "the observations of a trained, experienced police officer who is able to perceive and articulate meaning in given conduct which would be wholly

innocent to the untrained observer." Brown v. Texas, 443 U.S. 47, 52, 61 L. Ed. 2d 357, 362 n.2 (1979).

The officer in the instant case acted on more than an inarticulate hunch when he stopped the defendant. Even though it was daylight at the time of the stop, it was reasonable for him to suspect that the light would not function as required by RCW 46.37.050. His suspicion was proved correct in that the defendant's taillight did not light when the vehicle was stopped.

To follow the reasoning in Mr. Asher's jurisdictional statement would be to hold that an hypothetical police officer who observed a motor vehicle being driven with both headlights broken and in shards could not stop that vehicle during the hours of daylight to cite the driver for operating the vehicle with defective headlights. Such

an absurd result should be promptly rejected by this Court.

In the present case, it was reasonable for the officer to stop the defendant's car. Moreover, both the trail court and the superior court were correct in finding that the stop was based on a reasonable and articulable suspicion.

V. CONCLUSION

Any time a police officer stops a motorist, constitutional rights are implicated. The stop presented by this case does not present any significant question of constitutional law. The petition for a writ of certiorari should be denied. The Court should further

issue an order summarily disposing of the case on the merits under Rule 23.1.

DATED this 26th day of November, 1986.

Respectfully submitted,

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APPENDIX A

U.S. Constitution, Amendment IV

Searches and seizures

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

Revised Code of Washington 46.37.050

46.37.050. Tail lamps

(1) After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two tail lamps mounted on the rear, which, when lighted as required in RCW 46.37.020, shall emit a red light plainly visible from a distance of one thousand feet to the rear, except that passenger cars manufactured or assembled prior to January 1, 1939, shall have at least one tail lamp. On a combination of vehicles only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more thanone tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(2) Every tail lamp upon every vehicle shall be located at a height of not more tha seventy-two inches nor less than fifteen inches.

(3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render if clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxilliary driving lamps are lighted.